

Complaint

Miss A has essentially complained that The Royal Bank of Scotland Plc ("RBS") unfairly continued applying charges to her overdraft even when it was clear that she was in financial difficulty and failing to see a credit balance for an extended period.

Background

One of our investigators looked at this complaint and thought RBS should have realised that Miss A's overdraft had become unsustainable for her by September 2021 and so it shouldn't have added the charges it did from this point onwards.

RBS, predominantly because of matters which are no longer in dispute, didn't agree with the investigator's assessment.

As RBS didn't agree with the investigator's assessment the complaint was passed to an ombudsman for a final decision, as per the next stage of our dispute resolution process.

Furthermore, as Miss A has effectively agreed with the investigator's findings on matters, this decision is only looking at whether RBS acted fairly and reasonably towards Miss A from September 2021 onwards.

So while RBS remains dissatisfied regarding conclusions reached prior to this period, as I'm not looking at the period prior to September 2021, I can confirm that those factors do not affect my decision in this instance.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

RBS will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision.

Having considered everything provided, I think RBS acted unfairly when it continued adding interest and associated fees and charges to Miss A's overdraft from September 2021. By this point, it was evident that Miss A's overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

A cursory look at Miss A's statements leading up to this period shows that Miss A had been hardcore borrowing and hadn't seen meaningful credit balances for an extended period of time. Indeed, Miss A had gone from circumstances where she was in receipt of an income that was well in excess of her overdraft limit, to being on a fixed income that was lower than her limit. I can't see that RBS did anything to account for this change in circumstances.

Miss A did go into credit for an extremely short period of time in July 2021. However, this was a result of receiving a tax rebate of some form. The funds quickly went towards repaying

Miss A's existing creditors. Equally, I don't think that RBS could reasonably have seen this to have been a sustainable method of repaying the overdraft bearing in mind Miss A is unlikely to have received further similar payments going forwards.

In these circumstances, it's difficult for me to see how Miss A was in a position to repay what she owed within a reasonable period of time.

Overall I think that by September 2021, RBS ought to have realised that Miss A was struggling and unlikely to be able to sustainably repay her overdraft without help. In these circumstances, RBS should have stopped providing the overdraft on the same terms. It should have instead treated Miss A with forbearance, even if this meant taking corrective action in relation to the facility.

All of this means that RBS should have realised that Miss A wasn't using her overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms.

In reaching my conclusion, I've considered RBS's arguments in relation to the number of letters it sent Miss A which told her that she was using an overdraft in the way that was expensive and that she should get in contact if she was experiencing difficulty. RBS is effectively arguing that Miss A should have reached out if she was struggling and it was limited in what it could do in circumstances where she didn't.

I've thought about what RBS has said. But the mere fact that RBS felt the need to send Miss A so many letters, within a short period, means that it recognised there was a problem with the way that Miss A was using her overdraft.

Indeed, if I take RBS' argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Miss A because it sent her letters as it had identified that her overdraft usage had become a problem. But because Miss A didn't respond to the letters it was reasonable to continue allowing her to use her overdraft in the same way, notwithstanding that it had identified her use of her overdraft as being problematic.

In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment in circumstances where they simply cannot do so.

While Miss A didn't contact RBS until 2024, because she didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for RBS to conclude that her problematic overdraft usage would correct itself. This is particularly as Miss A's account statements clearly show a drastic change in circumstances. I don't think that RBS needed to wait for Miss A to explicitly confirm this change in circumstances where the information RBS had already showed there was a high likelihood of this being the case.

So as RBS didn't react to not receiving a response to letters that Miss A's problematic overdraft usage had triggered and instead continued charging in the same way, I think that it failed to act fairly and reasonably.

Miss A ended up paying additional interest, fees and charges on her overdraft at a time when she was already experiencing difficulty. So I think that Miss A lost out because of what RBS did wrong and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between RBS and Miss A might have been unfair to Miss A under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct RBS to do, in the following section of this final decision, results in fair compensation for Miss A given the overall circumstances of her complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what RBS needs to do to put things right for Miss A

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss A's complaint for RBS to put things right by:

- Reworking Miss A's current overdraft balance so that all interest, fees and charges applied to it from September 2021 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made RBS should contact Miss A to arrange a suitable repayment plan, Miss A is encouraged to get in contact with and cooperate with RBS to reach a suitable agreement for this. If it considers it appropriate to record negative information on Miss A's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in September 2021. RBS can also reduce Miss A's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss A along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then RBS should remove any adverse information from Miss A's credit file. RBS can also reduce Miss A's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires RBS to take off tax from this interest. RBS must give Miss A a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss A's complaint. The Royal Bank of Scotland Bank Plc should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 1 March 2025.

Jeshen Narayanan

Ombudsman